

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 03-1476

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United States of America,

Appellee,

v.

Cruz Roberto Alaniz,

Appellant.

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\* Appeal from the United States  
\* District Court for the District  
\* of Nebraska.

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[UNPUBLISHED]

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Submitted: October 28, 2003

Filed: November 4, 2003

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Before WOLLMAN, FAGG, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

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PER CURIAM.

Cruz Roberto Alaniz challenges the sentence the district court<sup>1</sup> imposed after he pleaded guilty to conspiring to distribute and possess with intent to distribute 500 grams or more of a mixture or substance containing methamphetamine, in violation of 21 U.S.C. § 846. The district court sentenced him to 121 months imprisonment and 5 years supervised release. On appeal, Mr. Alaniz's counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967),

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<sup>1</sup>The Honorable Richard G. Kopf, Chief Judge, United States District Court for the District of Nebraska.

arguing that the district court erred in assessing criminal history points for a sentence arising from an “expunged” Texas conviction.

After careful review, we find the district court’s decision to assess criminal history points for the Texas sentence was consistent with the Guidelines. Under both the terms of the Texas discharge order and Texas law, the discharge was not an expungement, and the discharge order indicates that the Texas conviction was set aside for reasons unrelated to Alaniz’s factual or legal innocence. See U.S.S.G. § 4A1.2, comment. (n.10); Cuellar v. Texas, 70 S.W.3d 815, 818 (Tex. Crim. App. 2002).

Following our independent review of the record, see Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no other nonfrivolous issues. Accordingly, the judgment is affirmed. We also grant counsel’s motion to withdraw.

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